

United States Court of Appeals for the Fourth Circuit

No. 15-1330

JAK Productions, Inc. and Group Consultants, Inc.

Plaintiffs – Appellants,

v.

Robert Bayer

Defendant– Appellee.

REPLY TO RESPONSE IN OPPOSITION TO MOTION TO EXPEDITE APPEAL

Appellee, Robert Bayer (“Appellee”) asserts that Appellants, JAK Productions, Inc. and Group Consultants, Inc. (“Appellants”) Motion to Expedite Appeals should be denied because: (1) “any urgency in this case is the direct result of Appellants’ own dilatory conduct[.]” (2) “Appellants’ proposed schedule would prejudice [Appellee]” by allowing Appellants more time to prepare an opening brief; and, (3) “because a favorable ruling would only entitle Appellants to a remand, not an automatic injunction.” (Response, p. 1). Not so on all counts.

First, Appellee waived all timeliness arguments in this case:

THE COURT: Is there any question about the timeliness of this action?

MR. MCFARLAND [Appellee’s prior counsel]: No, Your Honor.

(Tr. 52-53 (a copy of which is attached hereto as **Exhibit 1**)). Had Appellee not waived any timeliness argument before the trial court, Appellants would have presented evidence on the same and established a clear record supporting the timing of its conduct. Appellee’s prior waiver bars the argument it now attempts to make to this Court.

Second, both sides incur shortened briefing time in the event of expedited scheduling. Finally, as to remedy, the Court “review[s] the denial of the preliminary injunction *de novo* since the district court based its decision solely on a premise and interpretation of the applicable rule of law and the facts are established.” *Eisenberg ex rel. Eisenberg v. Montgomery Cnty. Pub. Sch.*, 197 F.3d 123, 128 (4th Cir. 1999). Ergo, this Court may direct entry of a preliminary injunction.

WHEREFORE, Appellants respectfully request that this Court grant their motion and expedite the briefing schedule, argument and decision on their appeal consistent with the proposals in paragraphs 16 and 17 of the Motion to Expedite or such other schedule as the Court deems proper.

Respectfully submitted,

/s/ Richard M. Wallace

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Dated: May 1, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 2015, a copy of the foregoing **Reply to Response in Opposition to Motion to Expedite** was filed using the United States Court of Appeals for the Fourth Circuit's ECF system, through which this document is available for viewing and downloading, causing a notice of electronic filing to be served upon the following counsel for Appellee:

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